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International Brotherhood of Electrical Workers, Local 494; International Brotherhood of Electrical Workers, Sixth District and Joseph G. Podewils and Gerald Nell, Inc. Cases 30-CB-4127 and 30-CB-4128

March 31, 2004

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On October 31, 2000, the National Labor Relations Board issued a decision and order in this proceeding.¹ Thereafter, on December 28, 2001, the United States Court of Appeals for the District of Columbia Circuit remanded the case to the Board for further proceedings not inconsistent with its opinion.² On remand, the Respondent and the Charging Parties filed briefs.

The Board has delegated its authority in this proceeding to a three-member panel.

Having accepted the remand, the Board has considered the decision of the court of appeals and the briefs on remand. For the reasons below, the Board now finds that the Respondent violated Section 8(b)(1)(B), as alleged.

Section 8(b)(1)(B) provides that it shall be an unfair labor practice for a labor organization to restrain or coerce an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. In our initial decision in this proceeding, the Board found that the Respondent IBEW Local 494 did not violate Section 8(b)(1)(B) and dismissed the complaint. Contrary to the finding of the administrative law judge, the Board found that the Respondent was not seeking to enter into a collective-bargaining relationship with the Employer, Charging Party Gerald Nell, Inc. Accordingly, the Board concluded that the Respondent did not violate Section 8(b)(1)(B).³

On review, the court of appeals squarely rejected the Board's finding that the Respondent was not seeking a collective-bargaining relationship with the Employer. The finding of the court of appeals, of course, is the law of the case. Because the Respondent was seeking a col-

lective-bargaining relationship with the Employer and because all the remaining elements of an 8(b)(1)(B) violation have already been adjudicated and established in the initial proceeding, it follows that the Respondent violated Section 8(b)(1)(B), and we so find.⁴

Having found that the Respondent violated Section 8(b)(1)(B), we shall issue an appropriate remedial order.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall rescind and remove from its records all disciplinary action brought against Joseph G. Podewils, including refunding to him any fines that may have been paid to the Respondent, with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and shall notify Podewils that this has been done. We shall also order that the Respondent reimburse Podewils for any costs that Podewils may have incurred in defending himself at the Respondent's disciplinary hearing. See *Elevator Constructors Local 10 (Thyssen Elevator Co.)*, 338 NLRB No. 83 (2002).⁵ We shall also order that the Respondent request that the International Union rescind its approval of the Respondent's discipline of Podewils and remove all references to such discipline from its records.

⁴ An 8(b)(1)(B) violation is established when a labor organization imposes discipline on a supervisor/member that may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer. *Florida Power & Light Co. v. Electrical Workers Local 641*, 417 U.S. 790, 804-805 (1974). In the initial proceeding, the Board adopted the judge's findings that Charging Party Podewils was an 8(b)(1)(B) representative, as he engaged in 8(b)(1)(B) duties as a grievance adjuster or collective bargainer. Further, the Board left undisturbed the judge's finding that the fine imposed on Podewils was likely to have adversely affected his performance of 8(b)(1)(B) duties. On remand, the Respondent contests these findings only to the extent of contending (in addition to seeking to have the Board revisit the issue of the Respondent's organizational intent) that Sec. 8(b)(1)(B) only comes into play when a union has a collective-bargaining relationship with the employer, which is absent here. See *Royal Electric*, supra, 481 U.S. at 596 (Scalia, J., concurring) (when the union's violation of Sec. 8(b)(1)(B) is indirect, that is, through the discipline of its members, would limit applicability of section to situations where there is an actual collective-bargaining relationship between the parties). This contention, however, does not reflect the state of current Board law, as noted above. Member Liebman believes that the Respondent's contentions regarding the application of Sec. 8(b)(1)(B) to unorganized settings are worthy of consideration. In her view, however, the law of this case, on remand, calls for the application of current Board precedent.

⁵ Consistent with *Thyssen Elevator Co.*, supra, we shall not order reimbursement of any expenses incurred during the Board proceeding.

¹ 332 NLRB 1223.

² 274 F.3d 536 (D.C. Cir. 2001).

³ As the Board noted in the initial decision, a union must, at a minimum, either have a collective-bargaining relationship with an employer, or at least be seeking to have such a relationship, in order to run afoul of Sec. 8(b)(1)(B). *NLRB v. Electrical Workers Local 340 (Royal Electric)*, 481 U.S. 573, 590 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Electrical Workers, Local 484, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing Gerald Nell, Inc., an employer, in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances by preferring and processing charges against Joseph G. Podewils, by holding a trial and finding Podewils guilty of such charges, and by levying a fine against him.

(b) In any like or related manner restraining or coercing Gerald Nell, Inc. in the selection of its representatives for the purposes of collective bargaining or adjustment of grievances.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, rescind the charges brought and the fine levied against Joseph G. Podewils, remove all references to the charges and fine from its files, and within 3 days thereafter notify him and the Employer in writing that this has been done and that the charges and fine will not be used against him in any way.

(b) If any part of the fine levied against Joseph G. Podewils has been paid, within 14 days refund to him the entire amount paid and reimburse him for any expenses he has incurred in defending against these charges, with interest, as set forth in the remedy section of this supplemental decision.

(c) Within 14 days of this Order, request that International Brotherhood of Electrical Workers rescind its approval of the discipline imposed on Joseph G. Podewils and remove all references to such discipline from its records.

(d) Within 14 days after service by the Region, post at its union office copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Gerald Nell, Inc., if

willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 2004

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit or protection

Choose not to engage in any of these protected activities.

WE WILL NOT restrain and coerce Gerald Nell, Inc., an employer, in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances by preferring and processing charges against Joseph G. Podewils, by holding a trial and finding Podewils guilty of such charges, and by levying a fine against him.

WE WILL NOT in any like or related manner restrain or coerce Gerald Nell, Inc. in the selection of its representatives for the purposes of collective bargaining or adjustment of grievances.

WE WILL, within 14 days of the Board's Order, rescind the charges brought and the fine levied against Joseph G.

⁶ If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Podewils, remove all references to the charges and fine from our files, and within 3 days thereafter notify him and the Employer in writing that this has been done and the charges and fine will not be used against him in any way.

WE WILL, within 14 days of the Board's Order, refund to Joseph G. Podewils any of the fine levied against him that has been paid and WE WILL reimburse him for any

expenses he has incurred in defending against the charges, with interest.

WE WILL, within 14 days of the Board's Order, request that the International Brotherhood of Electrical Workers rescind its approval of the discipline imposed on Joseph G. Podewils and remove all references to such discipline from its records.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 494